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June 16, 2006

ELECTRONIC MAIL

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte* – WC Docket No. 05-170 – In the Matter of Petition for
Forbearance under 47 U.S.C. §160(c) from Application of Unbundling
Rules that Limit Competitive Alternatives

Dear Ms. Dortch:

XO Communications, Inc., BridgeCom International, Inc., Broadview Networks, Eschelon Telecom, Inc., NuVox Communications, Inc., SNiP LiNK LLC, Talk America and Xspedius Communications submit this *ex parte* letter to respond to misstatements of law contained in a recent notice submitted by BellSouth Corporation (“BellSouth”) in this docket.

On June 14, 2006, BellSouth met with representatives from the offices of three Commissioners. It filed notices of the *ex parte* meetings, in which BellSouth summarized the arguments made in each meeting.¹ In the notices, BellSouth argues that the petition is “inconsistent with the express language of Section 10 that allows a carrier to petition for forbearance only from regulations applicable to the petitioning carrier.” BellSouth does not provide a citation for this new argument (an argument that it did *not* make in its comments on the petition in September), nor does it quote the “express language” it believes supports the proposition. As shown below, Section 10 contains no such limitation on petitions for forbearance or on the Commission’s authority under Section 10.

¹ See, e.g., Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Glenn T. Reynolds, Vice President – Federal Regulatory, BellSouth, WC Docket No. 05-170, dated June 15, 2006 (“BellSouth *ex parte*”). BellSouth filed separate notices, identical in substance, for each of the three meetings.

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Section 10(a) is not limited in the way claimed by BellSouth. It requires the Commission to forbear from *any regulation* if the standards for forbearance are met. It states, in relevant part, that:

The Commission shall forbear from applying any regulation or any provision of this chapter to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that [the standard for forbearance is met].²

This language grants the Commission broad discretion to exercise its forbearance authority. The Commission may choose to apply a forbearance ruling to any telecommunications carrier or class of telecommunications carriers, or to any telecommunications service or any class of telecommunications services. Notably, the provision does not say that the Commission shall forbear from applying any regulation “to the petitioning carrier,” as BellSouth’s *ex parte* argues. Rather, the statute permits the FCC to apply forbearance to “a” telecommunications carrier, class of carriers, etc. Thus, it is plain that the Commission may grant forbearance from any regulation if the substantive standards are met. Nothing in the statute limits the Commission’s authority to the petitioning carriers, or, as BellSouth alleges, to regulations that apply to the petitioning carriers.

Even if there were such a limitation, BellSouth’s opposition is nonsensical. The regulations from which Joint Petitioners seek forbearance do apply to them. For example, the EEL eligibility criteria require the “requesting telecommunications carrier” to certify to certain conditions.³ These conditions, and the related audit rules associated with them, plainly “apply” to the Joint Petitioners. Similarly, the DS1 transport cap is expressed as a limitation on the number of circuits that a requesting carrier may obtain on a route.⁴ If the limitation does not apply to carriers such as Joint Petitioners, it is hard to see to whom it does apply. Finally, the DS1 loop rules are worded as an obligation of incumbent LECs to provide certain elements, but it makes no sense to claim that the rules do not apply to requesting carriers that seek to obtain an unbundled loop. Therefore, the Commission can and must forbear from these regulations if it determines that Section 10’s substantive criteria have been met.

In a second argument in the *ex parte*, BellSouth mimics the arguments of other ILECs that the Commission must make a new impairment finding. This argument has been

² 47 U.S.C. § 160(a).

³ See 47 C.F.R. § 51.318(b).

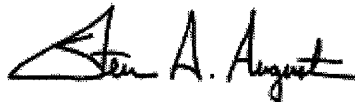
⁴ *Id.* § 51.319(e)(2)(ii)(B).

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refuted by Joint Petitioners, most recently in the June 6, 2006 *ex parte* letter.⁵ It is significant to note, however, that BellSouth discusses only the DS1 loop rule; it does not seriously attempt to show that the Commission made a finding of non-impairment with respect to the DS1 transport cap or the EEL eligibility criteria. As we explained in the June 6 *ex parte*, neither of these rules were adopted on impairment grounds.⁶ BellSouth's argument, whatever its validity with respect to the DS1 loop rule, has no merit with respect to these rules.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven A. Augustino". The signature is stylized with a large initial "S" and a cursive "Augustino".

Steven A. Augustino

SAA:pab

cc: Scott Bergmann
Michele Carey
Scott Deutchman
Ian Dillner
Sam Feder
Dan Gonzalez
Jessica Rosenworcel
Jeremy Miller
Tom Navin

⁵ Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Steven A. Augustino, Kelley Drye & Warren LLP, WC Docket No. 05-170, dated June 6, 2006 ("June 6 *ex parte*").

⁶ *Id.* at 4, 5.